

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ALEX EDWARD DURAN,	)	NO. CV 13-9100-MMM(E)
	)	
Petitioner,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
WARDEN PARAMO,	)	
	)	
Respondent.	)	
	)	

On December 10, 2013, Petitioner filed a "Petition for Writ of Habeas Corpus By a Person in State Custody" ("the Petition"). The Petition challenges Petitioner's 1985 Los Angeles Superior Court conviction. Petitioner challenged this same conviction in a habeas petition filed in this Court in 2012. See Duran v. Daniel Paramo, Warden, CV 12-1842-MMM(E) ("the prior habeas action"). On September 21, 2012, the Magistrate Judge in the prior habeas action recommended denial and dismissal of the prior petition with prejudice as untimely. On November 7, 2012, the District Judge filed an order accepting and adopting this recommendation. On November 8, 2012, this Court entered Judgment in the prior habeas action, denying and

1 dismissing the petition with prejudice.

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3 The Court must dismiss the present Petition in accordance with  
4 28 U.S.C. section 2244(b) (as amended by the "Antiterrorism and  
5 Effective Death Penalty Act of 1996"). Section 2244(b) requires that  
6 a petitioner seeking to file a "second or successive" habeas petition  
7 first obtain authorization from the Court of Appeals. See Burton v.  
8 Stewart, 549 U.S. 147, 157 (2007) (where petitioner did not receive  
9 authorization from Court of Appeals before filing second or successive  
10 petition, "the District Court was without jurisdiction to entertain  
11 [the petition]"); Barapind v. Reno, 225 F.3d 1100, 1111 (9th Cir.  
12 2000) ("the prior-appellate-review mechanism set forth in § 2244(b)  
13 requires the permission of the court of appeals before 'a second or  
14 successive habeas application under § 2254' may be commenced"). A  
15 petition need not be repetitive to be "second or successive," within  
16 the meaning of 28 U.S.C. section 2244(b). See, e.g., Thompson v.  
17 Calderon, 151 F.3d 918, 920-21 (9th Cir.), cert. denied, 524 U.S. 965  
18 (1998); Calbert v. Marshall, 2008 WL 649798, at \*2-4 (C.D. Cal.  
19 Mar. 6, 2008). The dismissal of a habeas petition as barred by the  
20 statute of limitations "constitutes an adjudication on the merits that  
21 renders future petitions under § 2254 challenging the same conviction  
22 'second or successive' petitions under § 2244(b)." McNabb v. Yates,  
23 576 F.3d 1028, 1030 (9th Cir. 2009). Petitioner evidently has not yet  
24 obtained authorization from the Ninth Circuit Court of Appeals.  
25 Consequently, this Court cannot entertain the present Petition. See  
26 Burton v. Stewart, 549 U.S. at 157.

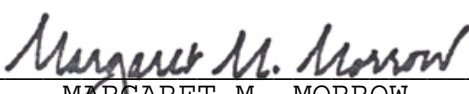
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1 For all of the foregoing reasons, the Petition is denied and  
2 dismissed without prejudice.

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4 LET JUDGMENT BE ENTERED ACCORDINGLY.

5  
6 DATED: January 14, 2014

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10 MARGARET M. MORROW  
11 UNITED STATES DISTRICT JUDGE  
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13 PRESENTED this 13th day of  
14 December, 2013, by:

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16 \_\_\_\_\_/s/\_\_\_\_\_  
17 CHARLES F. EICK  
18 UNITED STATES MAGISTRATE JUDGE  
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